

HISTORICAL DIVISION[223]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs hereby amends Chapter 35, "Administration," Iowa Administrative Code.

The rules in Chapter 35 set forth the general procedures by which the historic preservation program operates in order to implement the requirements of the Historic Preservation Fund Grants Manual, the National Historic Preservation Act, and Iowa Code chapter 303. The purpose of this amendment is to update rule 223—35.2(303), Definitions.

Notice of Intended Action for this amendment was published in the April 18, 2012, Iowa Administrative Bulletin as **ARC 0104C**.

One public hearing was held May 10, 2012, to receive comments on the Notice of Intended Action. In addition, representatives of the Department appeared before the Administrative Rules Review Committee (ARRC) on May 8, 2012. Written comments were received by the Department until May 10, 2012.

The Director received comments from the Advisory Council on Historic Preservation (ACHP) and the National Park Service (NPS), the principal federal agencies responsible for implementing and ensuring compliance with the National Historic Preservation Act; the federal agency Rural Utilities Service (RUS), a primary lender to Iowa's rural utilities; the National Trust for Historic Preservation (NTHP), a national, privately funded preservation organization; the state organization Preservation Iowa; the Iowa Tribe of Kansas and Nebraska; the Association of Iowa Archaeologists; and a number of archaeologists and interested persons.

Based upon the comments received, the Director has modified the amendment published under Notice of Intended Action to correct a number of the definitions.

In addition, three definitions no longer used were stricken from the chapter: "comprehensive historic preservation planning," "cultural resource" and "survey and planning grants." The definition of "review committee" was replaced with a definition for "state historic preservation review board."

This amendment is needed to conform Iowa's historic preservation program to that required under the National Historic Preservation Act and will ensure continued eligibility of the State for federal historic preservation program grant funds administered by the Secretary of the Interior. As a result, this rule making has a positive impact on jobs.

This amendment is intended to implement 2011 Iowa Code Supplement section 303.2, subsection 2, paragraph "c," and section 303.18 and 16 U.S.C. §470 et seq.

This amendment shall become effective September 12, 2012.

The following amendment is adopted.

Amend rule 223—35.2(303) as follows:

223—35.2(303) Definitions. The definitions listed in Iowa Code section 17A.2 and rule 223—1.2(303), Iowa Administrative Code, shall apply for terms as they are used throughout Title V of these rules. In addition, the following definitions apply:

"Act" means the National Historic Preservation Act of 1966, Public Law 89-665, as amended through December 22, 2006 (16 U.S.C. §470 et seq.).

"Advisory Council" means the Advisory Council on Historic Preservation established under ~~Section 201 of the National Historic Preservation Act of 1966, Public Law 89-665~~ the Act.

"Applicant" means any individual or entity seeking funding, permitting, licensing or approval from a federal agency or funding or service for a historic preservation activity from the society.

"Certified local government" means a unit of local government which is certified by the National Park Service to carry out the purposes of the National Historic Preservation Act in accordance with ~~Section~~ Sections 101(c), 103(c) and 301 of the Act and 36 CFR Part 61, April 13, 1984, and August 30, 1985.

~~“Comprehensive historic preservation planning” means the ongoing planning process by the division or a local community that is consistent with technical standards issued by the U.S. Department of the Interior and which produces reliable, understandable, and up-to-date information for decision making related to the identification, evaluation, and protection or treatment of historic resources.~~

~~“Considered eligible” means those properties that both the state historic preservation officer and a state or federal agency agree may be considered eligible for listing in the National Register of Historic Places, but have not been forwarded to the National Park Service for a formal determination of eligibility properties formally determined as eligible in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.~~

~~“Cultural resource” means man-made components of the physical environment which represent or reflect the history and prehistory of the state.~~

~~“Deputy state historic preservation officer” means the designee of the state historic preservation officer who is responsible for the daily administration of the historic preservation program in the state.~~

~~“Determination of eligibility” means the finding by the National Park Service that a district, site, building, structure, or object meets the National Register criteria, but a formal nomination has not been forwarded to the National Park Service. A determination of eligibility does not make the property eligible for such benefits as grants, loans, or tax incentives that have listing on the National Register as a prerequisite process described in 36 CFR § 800.4(c) for evaluating the historic significance of identified properties.~~

~~“Historical Historic Preservation Fund” means the federal source from which moneys are appropriated to fund the program of matching grants-in-aid to the states and other authorized grant recipients for historic preservation programs, as authorized by Section 401(d)(1) 108 of the National Historic Preservation Act of 1966 as amended through December 22, 2006.~~

~~“Historic context” means a historical theme summary created for planning purposes that links historical information with related historic properties based on the minimal components of a shared theme, specific time period, and geographical area.~~

~~“Historic preservation” means the protection, rehabilitation, restoration, and appropriate adaptive reuse of historic properties significant in American history, architecture, archaeology, engineering, or culture includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities, or any combination of the foregoing activities.~~

~~“Historic property” means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on, the National Register of Historic Places. “Historic property” includes artifacts, records, and material remains that are related to such properties or resources.~~

~~“Investment tax credit” means a federal income tax credit for the substantial rehabilitation of historic buildings for commercial, industrial, and rental residential and nonresidential purposes.~~

~~“National Register of Historic Places” means the national list of historic properties significant in American history, architecture, archaeology, engineering, or culture, maintained by the Secretary of the Interior.~~

~~“National Trust for Historic Preservation” means the private, nonprofit organization chartered by legislation approved by Congress on October 26, 1949, with the responsibility for encouraging public participation in the preservation of districts, structures, sites, buildings, and objects significant in American history and culture.~~

~~“Property owner” means that individual who pays local property tax for a historic property that they either own or are purchasing by contract.~~

~~“Review and compliance” means the review of federal, state and local undertakings according to undertakings pursuant to Section 106 of the Act and its implementing regulations at 36 CFR Part 800: Protection of Historic Properties, September 21, 1986, and the regulations of the Advisory Council on Historic Preservation governing the Section 106 review process.~~

~~“Review committee” means the Iowa state national register nominations review committee, which is appointed by the state historic preservation officer.~~

“Secretary’s Standards and Guidelines” means the Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation (36 CFR Part 61), which provide technical information about archaeological and historic preservation activities and methods. The subjects covered include preservation planning; identification, evaluation, registration, historic research and documentation; architectural and engineering documentation; archaeological investigation; historic preservation projects; and preservation terminology.

“Section 106” means the section of the ~~National Historic Preservation Act of 1966, Public Law 89-665, which that~~ requires the federal agency head with jurisdiction over a federal undertaking or federally licensed undertaking agencies to take into account the effects of the agency’s undertakings on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council for Historic Preservation a reasonable opportunity to comment on the undertaking that the agencies carry out, fund, license, permit or approve on historic properties and afford the Advisory Council a reasonable opportunity to comment. The regulations of 36 CFR Part 800, ~~September 21, 1986,~~ define the process used by an agency to meet these responsibilities and the role of the state historic preservation officer in review and comment on these undertakings.

“State historic preservation officer” or *“SHPO”* means the governor’s appointee who is responsible for the management of the historic preservation program of the state and compliance of the state historic preservation program with federal statutes and regulations including those of the National Park Service.

“State historic preservation review board” means the Iowa state national register of historic places nominations review committee established as provided in Section 101(b)(1)(B) of the Act:

1. The members of which are appointed by the SHPO (unless otherwise provided for by state law);
2. A majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archaeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, and landscape architecture; and
3. Which has the authority to:
 - Review National Register nominations and appeals from nominations;
 - Review appropriate documentation submitted in conjunction with the Historic Preservation Fund;
 - Provide general advice and guidance to the state historic preservation officer; and
 - Perform such other duties as may be appropriate.

“Survey and planning grants” means the grants which result in the survey, evaluation, and nomination to the National Register of Historic Places of historic properties as well as the planning for these activities.

“Technical assistance” means services provided to the public for the development of skills or the provision of knowledge relative to the background, significance, operation, or implications of some aspect of the historic preservation program.

[Filed 7/19/12, effective 9/12/12]

[Published 8/8/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/8/12.